

23 January 2007


**Subject:** Addendum No. 1 to the Plans and Specifications for the San Jose/Santa Clara Water Pollution Control Plant, FY 2006-2007 Capital Improvement Program, **Reliability Improvement for Switchgear S2 Project.**

Notice is given that the revisions listed in the attached Addendum No. 1 are hereby made part of and incorporated into the Plans and Specifications for the San Jose/Santa Clara Water Pollution Control Plant, FY 2006-2007 Capital Improvement Program, **Reliability Improvement for Switchgear S2 Project.**

**This addendum should be acknowledged when your bid is submitted. Failure to acknowledge the Addendum may constitute grounds for rejection of the bid.**

John Stufflebean  
Director  
Environmental Services Department

By: \_\_\_\_\_



Ting Ong, PE  
Senior Engineer

Attachment  
cc: Lee Price, City Clerk  
Michael Crespan, Office of Equality Assurance

## **Addendum No. 1**

San Jose/Santa Clara Water Pollution Control Plant

### **Reliability Improvement for Switchgear S2 Project**

#### **Specifications**

##### **1. Mandatory Submittals Requirement & Acknowledgement**

Replace the entire section with the attached document.

##### **2. Special Provisions**

Replace the entire section with the attached document.

##### **3. Attachment 5**

Replace the entire section with the attached document.

## **Mandatory Submittals Requirement & Acknowledgement**

San Jose/Santa Clara Water Pollution Control Plant

### **Reliability Improvement for Switchgear S2 Project**

Submit the Following with Bid:

#### **1. Safety Records**

- A. Copy of completed OSHA Form 300A, "Summary of Work-Related Injuries and Illnesses" for most recent calendar year.
- B. Copy of communication from contractor's workers' compensation insurance carrier indicating the contractor's "Experience Modifier" (or "ex. Mod")

#### **2. Applicable Certificates**

Confined space training certificates for rescuer & crew members and previous experience pertinent to Confined Space work

City of San José  
California

Environmental Services Department

## Special Provisions

for the

### Reliability Improvement for Switchgear S2 Project

#### Specifications and Plans

The work embraced herein shall be done in accordance with the 1992 Standard Specifications and the 1992 Standard Details insofar as the same may apply and in accordance with the following special provisions. "Contractor" is defined as the Design-Builder or Design-Build Contractor.

**Section 1** of the Standard Specifications (page 1-6) shall have the following paragraph added:

**1-1.278 Partnering** - The development of team-based relationships between the Contractor and City in which:

- A. trust and open communications are encouraged and expected from participants,
- B. parties address and resolve issues and problems promptly and at the lowest possible level,
- C. parties seek to develop solutions that are agreeable and meet the needs of everyone involved,
- D. all parties have identified common goals for the partnerships and at the same time are aware of and respect each other's goals and values, and
- E. parties seek input from each other in an effort to find better solutions for the problems and issues at hand, thus creating synergy in the relationship that fosters cooperation and improves the productivity of the partnership.

The term is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between the City and Contractor.

**Section 2-1.095** of the Standard Specifications (pages 2-4 and 2-5) shall be revised to read as follows:

**2-1.095 Relief of Bidders** - After the time set for the opening of bids, no bidder shall be relieved of a bid, unless the City consents, and there shall be no change made in any bid because of a mistake. However, if such relief is not granted and the bid guarantee declared forfeit, the bidder may bring an action against the City in a court of competent jurisdiction in Santa Clara County for the recovery of the amount forfeited, without interest or costs.

The complaint shall be filed, and summons served on the Director of Environmental Services Department of the City of San Jose, within 90 days after the opening of the bid; otherwise, the action shall be dismissed.

To be relieved of its bid without forfeiture of its bid security, the bidder shall establish to the satisfaction of the City, determined in its sole and absolute discretion, that:

- A. A mistake was made.
- B. The Contractor gave the City written notice within five working days after the opening of the bids of the mistake, specifying in detail in the notice how the mistake occurred.
- C. The mistake made the bid materially different than the Contractor intended it to be.
- D. The mistake was made in filling out the bid and not due to an error in judgment or to carelessness by the Contractor in inspecting the site of the work, or in reading the plans or specifications.

Other than the above described notice to the City, no claim is required to be filed by the bidder before bringing a legal action against the City under this Section to recover a forfeited bid guarantee.

A bidder who claims a mistake and is relieved of its bid or who forfeits its bid guarantee shall be prohibited from participating in further bidding on the contract for the public work on which the mistake was claimed or security forfeited.

**Section 2-1.10** of the Standard Specifications shall be revised to read as follows:

**2-1.10 Disqualification of Bidders** – The City may disqualify a bidder and reject the bidder's bid for any one or more of the following causes:

- A. The bidder is barred from bidding on City projects under the provisions of Chapter 4.10 of the San Jose Municipal Code.
- B. More than one proposal from an individual, firm, partnership, corporation, or combination thereof under the same or different names is received, all such proposals will not be considered.
- C. Evidence of collusion among bidders.
- D. Lack of competency as revealed by any financial statement, as may be required by the special provisions, or by experience or plant and equipment statements submitted.
- E. Lack of responsibility as shown by past work on any public works project for the City or any other public entity judged from the standpoint of workmanship and/or progress.
- F. Incomplete work on any public works project for the City or any other public entity which, in the judgment of the City, might hinder or prevent the bidder from promptly completing additional work if awarded.

- G. Being in arrears on any existing public works contract for the City or any other public entity, in litigation with the City, or having defaulted on a previous contract with any public entity.
- H. Failure of the bidder to have all required qualified, licensed design professionals as specified in the Request for Proposals.
- I. Failure of the bidder to have a valid Contractor's license in the class specified in the Notice to Contractors at the time of bid opening, except as provided for projects where federal funds are involved as specified in Section 7-1.01.
- J. Failure of the bidder to provide prices for all items in the proposal, including alternatives, or submitting an incomplete or otherwise non-responsive proposal.
- K. The bidder has engaged in any activity constituting grounds for debarment under the provisions of Section 4.10.355 of the San Jose Municipal Code.
- L. Any other ground which the Project Manager determines would significantly impair the ability of the bidder to perform the proposed work. In making this determination, the Project Manager may consider, without limitation, items such as any previous or current prevailing wage violations by the bidder, the number of stop notices on previous public works projects performed by the bidder, and the existence of past or current agreements with other public entities to not bid on public works projects.

**Section 2-1.14** of the Standard Specifications (page 2-7) shall be revised to substitute the following for the first sentence in the second paragraph of said section:

**2-1.14 Addenda and Interpretations** – Every request for interpretation shall be in writing addressed to:

Director of Environmental Services Department  
Attn: Project Manager  
CIP Engineering  
700 Los Esteros Road  
San Jose, CA 95134

and to be given consideration must be received at least 7 days prior to the date fixed for the opening of bids.

**Section 4-1.03A** of the Standard Specifications (page 4-2) shall be revised to add the following subsections:

**4-1.03A(1) Cost Determination** – Total cost of each and every change order shall be the sum of labor costs, material costs, equipment rental costs and specialist costs as defined in Section 9, "Measurement and Payment". This limit applies in all cases of claims for extra work, whether calculating contract modifications, RFPs, or calculating claims of all types, and applies even in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. No other costs, including special damages of any type, arising out of or connected with the performance of extra work, of any nature, may be recovered by Contractor.

**4-1.03.A(2) Overhead and Profit** – The following constitutes charges that are included in overhead for all contract modifications, including force account work:

- A. Drawings: filed drawings, shop drawings, etc. including submissions of drawings.
- B. Routine field inspection of work proposed.
- C. General superintendence.
- D. General administration of Change Orders.
- E. Computer services.
- F. Reproduction services.
- G. Salaries of project engineer, superintendent, timekeeper, storekeeper and secretaries.
- H. Janitorial services.
- I. Temporary on-site facilities such as offices, telephones, plumbing, electrical (power, lighting), platforms, fencing, etc.
- J. Home office expenses.
- K. Insurance and Bond premiums.
- L. Procurement and use of vehicles and fuel used coincidentally in base bid work.
- M. Surveying.
- N. Estimating.
- O. Protection of work.
- P. Final clean-up.
- Q. Other incidental work.

Overhead and profit on labor for extra work shall not exceed a total of 15 percent. Overhead and profit on materials for extra work shall not exceed a total of 15 percent. Overhead and profit on equipment rental for extra work shall not exceed a total of 15 percent. When extra work is performed by a first tier subcontractor, Contractor shall receive a five (5) percent markup on subcontractors' total costs of extra work.

**4-1.03. A (3) Taxes** – All applicable taxes shall be included.

**4-1.03.A(4) City Operated Equipment** – When City-operated equipment is used to perform extra work, Contractor shall be paid for equipment and operator as follows:

- A. Payment for equipment will be made in accordance with Section 9-1.03A (3) "Equipment Rental."

- B. Payment for cost of labor will be made at not more than rates of such labor established by collective bargaining agreements for type of worker and location of work, whether or not City-operator is actually covered by such an agreement.

**4-1.03.A(5) Extra Work Performed by Special Forces or Other Special Services** – When City and Contractor, by agreement, determine that extra work cannot be performed by forces of Contractor or those of any subcontractors, such extra work item may be performed by specialist. Invoices for extra work on basis of current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with established practice of special service industry to provide complete itemization. In those instances wherein Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from Site, charges for that portion of extra work performed in such facility may, by agreement, be accepted as a specialist billing. City must be notified in advance of all off-site work. To specialist invoice price, less credit to City for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added fifteen percent (15%) in lieu of the percentages provided in Section 9-1.03A “Work Performed by Contractor.”

**Section 5** of the Standard Specifications (page 5-12) shall have the following paragraphs added:

**5-1.17 Partnering** - The City and Contractor will use good faith efforts to promote the formation of a successful Partnering relationship in order to effectively complete the Contract to the benefit of both parties. The purpose of this relationship is to establish and maintain cooperative communication and to mutually resolve conflicts at the lowest responsible management level. The establishment of a Partnering relationship will not change or modify the terms and conditions of the Contract and will not relieve either party of the legal requirements of the Contract.

The City and Contractor will engage in either Formal Partnering or Informal Partnering, depending upon the size of the project.

**5-1.17A Formal Partnering** – In Formal Partnering the City and the Contractor implement the Partnering relationship through at least one pre-construction partnering workshop conducted by an independent facilitator. The purpose of the initial pre-construction workshop is to mutually develop a strategy for forming a successful partnering relationship. The City and Contractor may participate in additional facilitated workshops during the life of the project as they mutually agree is necessary and appropriate.

For all projects in which the engineer’s estimate for the entire project prior to advertising for bids is \$10 million or more, the City and Contractor shall participate in Formal Partnering.

For all projects in which the engineer’s estimate for the entire project prior to advertising for bids is \$1 million or above but less than \$10 million dollars, the Contractor may elect to require the parties to participate in Formal Partnering. The Contractor shall elect Formal Partnering by submitting a request in writing to the Project Manager after approval of the Contract.

The scheduling of a partnering workshop, selection of the partnering facilitator and workshop



site, and other administrative details shall be as agreed to by both parties. The parties shall use good faith efforts to schedule the initial, pre-construction partnering workshop and to select the facilitator for the workshop as soon as reasonably possible following award of the Contract where Formal Partnering is mandatory or as soon as reasonably possible following a Contractor's election to require Formal Partnering for all other projects.

The costs of Formal Partnering involved in providing the pre-construction partnering workshop, any subsequent, additional partnering workshops, and the facilitator for the partnering workshops shall be borne equally by the City and Contractor. These costs may be provided elsewhere in this Contract either as an allowance item or a specific bid item. If not, then the Project Manager may issue a change order in the amount of one-half of the estimated cost of the facilitator and the partnering workshops.

The division of cost for the facilitator and partnering workshops will be made by determining the cost in conformance with the provisions in Section 9-1.03B, "Work Performed By Special Forces or Other Special Services," of the Standard Specifications, and paying to the Contractor one-half of that costs, except no markups will be allowed.

All other costs associated with Formal Partnering will be borne separately by the party incurring the costs, such as wages and travel expenses, and no additional compensation will be allowed therefor.

**5-1.17B Informal Partnering** - In Informal Partnering the City and the Contractor will implement the Partnering relationship through partnering discussions that are not conducted by an independent facilitator. The City and Contractor may participate in additional unfacilitated partnering meetings during the life of the project as they mutually agree is necessary and appropriate.

The City and Contractor will engage in informal partnering as follows:

- A. on all projects in which the Engineer's estimate for the entire project prior to advertising for bids is below \$1 million, and
- B. on all projects in which the engineer's estimate for the entire project prior to advertising for bids is \$1 million or above but less than \$10 million and the Contractor has not elected Formal Partnering.

**Section 6-1.05 Paragraph 1** of the Standard Specifications (page 6-2) shall be revised to read as follows:

**6-1.05 Trade Names and Alternatives** – For convenience in designation on the plans or in the specifications, certain articles or materials, to be incorporated in the work may be designated under a trade name or the name of a manufacturer and catalog information and followed by the words "or approved equal." The use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements and to the special provisions:

**Section 7-1.01A (4)** of the Standard Specifications (page 7-5) shall be revised to read as follows:

**7-1.01A (4) Labor Nondiscrimination** - Attention is directed to Section 1735 of the Labor Code, which reads as follows:

“No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter.”

**Section 7-1.04 Permits and Licenses** of the Standard Specifications (page 7-14) shall have the following paragraph added:

“The Contractor shall defend, indemnify, and hold harmless the City, its employees, and its agents from all legal claims, losses, actions in law or equity civil and/or criminal, arising from any and all acts, omissions, or negligence of the Contractor for failure to obtain any required permit or license of in violation of any permit or license issued.”

**Section 7-1.09 Public Safety** of the Standard Specifications (page 7-17) shall have the following subsection added:

**Section 7-1.09A Construction Safety**

A. Contractor's Responsibility

Attention is directed to Sections 7-1.01E, “Trench Safety”, 7-1.06, “Safety & Health Provisions”, 7-1.09, “Public Safety”, 7-1.12, “Responsibility for Damage,” and 7-1.121 “Protection of Contractor's Work & Property” of the Standard Specifications.

The Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons, including employees and property, during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to U.S. Department of Labor, the California Occupational Safety and Health Act (OSHA), and all other applicable Federal, State and local laws, ordinances, codes, the requirements set forth below, and any regulations that may be detailed in other parts of these documents. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth herein.

1. For all work to be performed in the Plant's fenced Chlorine Area, the Contractor must notify Plant Operations of their entrance and exits on a daily basis and coordinate all work with Plant Operations prior to commencement of work.
2. The Contractor shall develop and maintain, for the duration of this Contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

3. The duty of the Engineer to conduct construction review of the Contractor's performance is not intended to include a review or approval of the adequacy of the Contractor's safety supervisor, the safety program, or any safety measures taken in, on, or near the construction site.
4. The Contractor, as part of this safety program, shall maintain at his office or other well-known place at the job site, safety equipment applicable to the work as prescribed by the aforementioned authorities, all articles necessary for giving first aid to the injured, and shall demonstrate an understanding of the Plant procedures established for emergency care of persons who may be injured on the job site.
5. If a claim is made by anyone against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim. Such notice shall be in addition to any other notice requirements which may apply to such claims.

#### B. Plant Safety Plan

Each contractor and subcontractor shall be required to attend a pre-construction meeting to receive a briefing by the Environmental Services Department Safety Officer regarding Plant safety issues and measures.

#### C. Incident or Accident Emergency at Plant

In the event of an accident or incident during construction, Contractor shall immediately notify the Plant Computer Room.. Contractor shall call 911 for accident involving bodily injury, fire hazard, damage to gas piping, flooding and similar occurrences, requiring an immediate emergency response. Contractor shall also comply with all CAL-OSHA notification requirements.

The Plant Emergency Control Center is in the Computer Room located inside the Administration Building. Computer Room Staff can be reached 24 hours day and night at phone number 408-945-5317.

#### D. Plant Facilities Operation

Contractor personnel shall not operate, by any means, existing Plant facilities. Contractor shall submit 72 hour advanced notice to City Engineer for any required facility change in operation including valve lockup and tagging for system shutdown for each individual project. The Plant staff will execute the shutdown after the request has been approved.

#### E. Training & Certificates

Contractor personnel shall have sufficient training and certificates in performing work such as confined space entry, asbestos material removal, welding, diving, heavy equipment operation, and others. Up-to-date certificates for all personnel performing such work shall be provided to City Engineer or Plant area supervisor before the start of the work.

#### F. Equipment Operation

All cranes and hoists, forklifts, confined space rescue equipment, gas monitors, diving gear, and welding tools or other equipment shall be certified or verified (tested or calibrated) for their operability and rated capacity. Contractor shall present those certificates to City Engineer or Plant area supervisor before the start of the work.

#### G. Confined Space Entry

No confined-space entry is allowed unless specifically approved by the City Engineer. A contractor planning a confined-space entry on Plant grounds must submit a copy of the company's confined-space program to the City Engineer. Contractor must be prepared to follow California Code of Regulations (CCR), Title 8, Section 5157 governing confined space entry, as well as the procedures followed by Plant personnel. Contractor is responsible for supplying own certified rescuer and rescuing equipment at no cost to the City. Contractor must notify the City Fire Department of the time and date prior to confined space entry.

#### H. Hot Work Responsibilities

Fire resulting from hot work could significantly affect Plant operations. Hot work includes brazing, cutting, grinding, soldering, torch-applied roofing, and welding. No hot work is permitted without authorization from the City Engineer. A signed hot work permit must be issued by the responsible Plant party. Specific fire fighting equipment and protection gear will be required at the hot work site before any work can be started.

#### I. Submittals, if applicable, after the Award of Contract

1. Mandatory Safety program: Injury and Illness Prevention Program (IIPP) or Safety Work Plan
2. Material Safety Data Sheets (MSDS's): Any hazardous material brought onto the plant site by Contractor or subcontractors
3. Hot Work Program: For welding, torching, cutting, brazing, etc., around combustible or hazardous materials
4. Training Certificate or License: Asbestos removal, welding, diving, and heavy equipment operation (for cranes, forklifts, etc), confined-space entry and rescue, etc.
5. Calculations: Seismic design for equipment support, shoring for deep soil excavation, adequacy check of existing floor and structures for support of moving loads, etc.

**Section 7-1.22 Provisions of Law and Venue** of the Standard Specifications (page 7-30) shall have the following paragraph added:

"All depositions, document production, mediations, arbitrations, and any other meetings will take place in the City of San Jose."

**Section 8-1.01** of the Standard Specifications (page 8-1) shall be revised to read as follows:

**8-1.01 Subcontracting** – Revise the third paragraph of Section 8-1.01, “Subcontracting”, of the Standard Specifications to read “The Contractor shall perform with the Contractor’s own organization contract work amounting to not less than 50 percent of the contract price shown for Item 2 on the Schedule of Quantities , except that any designated “Specialty Items” may be performed by subcontract and the amount of any such “Specialty Items” so performed may be deducted from the contract price shown for Item 2 on the Schedule of Quantities before computing the amount of work required to be performed by the Contractor with the Contractor’s own organization.”

**Section 8-1.06** of the Standard Specifications is revised to read as follows:

**Section 8-1.06 Time of Completion** - Time of the Essence: All time limits specified in this contract are of the essence of the contract. Unless specifically designated otherwise, the term “day” appearing anywhere in the Contract Documents shall mean a calendar day.

Starting and Completion Date: The City shall designate in the Notice to Proceed the starting date of the contract on which the Contractor shall immediately begin and thereafter diligently prosecute the work to completion. The Contractor agrees to complete the work on the dates specified for completion of all or designated portions of the Contractor’s performance in the contract unless such time is adjusted, in writing, by change order approved by the City (“Milestone Dates”). The Contractor may complete the work before the completion date if it will not interfere with the City or their other contractors engaged in related or adjacent work. The work shall be regarded as completed as noted on the City’s Notice of Completion or Notice of Beneficial Occupancy.

**No Additional Days or Delay Compensation Will Be Granted for Inclement Weather or Conditions Resulting Immediately Therefrom as this Project involves Indoor Work .**

**Section 8-1.06B** of the Standard Specifications shall be added as follows:

**8-1.06B Annual Holiday Closure** - At the option of the Project Manager, the contractor may be required to suspend all work and activities during the City’s annual Holiday Closure in late December and early January of each year. No work shall be done during this suspension except such work as is necessary for the proper care and protection of work already performed, or except in case of an emergency, and in any case, only with the prior written permission of the Project Manager.

This suspension of work will be at no cost to the City. Calendar days will not be assessed during this suspension of work.

**Section 8-1.07** of the Standard Specifications shall be revised as follows:

**8-1.07 Liquidated Damages** – Replace the words “working days” with “calendar days”.

**Section 8-1.07A – No Pay for Delay** of the Standard Specifications shall be revised to read as follows:.

**Section 8-1.07A Contractor Caused Delay** - Should the progress of the Work or of the Project be delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect or act or failure to act of the Contractor or any of its officers, agents, servants, employees, subcontractors or suppliers so as to cause any additional cost, expense, liability or damage to City or any damages or additional costs or expenses for which City may or shall become liable, the Contractor and its surety shall and does hereby agree to compensate City for and indemnify them against all such costs, expenses, damages and liability.

If, the progress of the Work or of the Project be delayed by any fault or neglect or act or failure to act of the Contractor or any of its officers, agents, servants, employees, subcontractors or suppliers, then the Contractor shall, in addition to all of the other obligations imposed by this Agreement upon the Contractor in such case, and at its own cost and expense, work such overtime as may be necessary to make up for all time lost in the completion of the Work and of the Project due to such delay.

**Section 8-1.07B Delay Caused by Other** – Should the Contractor be delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the Work by any cause including but not limited to any act, omission, neglect, negligence or default of City or by an employee, agent or representative of the City (other than by reason of the proper exercise of their respective rights, duties and obligations under the Contract Documents), or by damage caused by fire or other casualty or by the combined action of workers or by governmental directive or order in no wise chargeable to the Contractor, or by any extraordinary conditions arising out of war or government regulations, or by any other cause beyond the control of and not due to any fault, neglect, act or omission of the Contractor, its officers, agents, employees, subcontractors or suppliers, the Contractor shall be entitled to an extension of time for a period equivalent to the time lost by reason of any and all of the aforesaid causes; provided, however, that the Contractor shall not be entitled to any such extension of time for inclement weather and conditions resulting immediately therefrom, nor shall Contractor be entitled to an extension of time unless the Contractor:

- A. notifies City in writing of the cause or causes of such delay, obstruction, hindrance or interference within forty eight (48) hours of the commencement thereof, and
- B. demonstrates that it could not have anticipated or avoided such delay, obstruction, hindrance or interference and has used all available means to minimize the consequences thereof.

Contractor acknowledges that provision of such notice is an essential condition precedent to Contractor's rights in connection with any such delays, obstructive hindrances or interferences to City ability to fully identify, and expeditiously, address and avoid such cause or causes, and, accordingly, Contractor expressly waives all rights with respect to any such cause or causes for which notice hereunder was not provided. Notwithstanding the foregoing, if the General Contract is at variance with granting such time extension, then the provisions of the General Contract shall control.

**Section 8-1.07C Damages for Compensable Delay** – The Contractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for any delay, obstruction, hindrance or interference to the Work over and beyond that which is specified in in Section 8-1.07B, and that which is specified by duly executed change orders.

In the event of delay in the Work that is within Section 8-1.07B, the contractor shall be entitled to an extension of time and compensation for such delay in strict accordance with the provisions of this section. The extension of time and provision for compensation shall not be allowed unless the Contractor provides the City with written notice within forty-eight (48) hours of the commencement of any such delay. The City must provide written approval of any extension of time, or payment of compensation. No verbal approval, either express or implied, or any grant of time extension by City or its agents shall be binding upon City unless and until such approval is expressly ratified in writing.

Contractor's remedy for a Section 8-1.07B Delay, in addition to the extension of time, shall be as follows, upon contractor's demonstration that these costs were actually impacted by the Section 8-1.07B Delay:

- A. Field or on-site labor according to actual payroll data for the time of the Section 8-1.07B Delay. No multipliers will be allowed unless previously approved in writing by the City;
- B. Idle field equipment will be priced at a daily rate calculated from the manufacturer quoted or invoiced costs;
- C. Idle field rental equipment will be priced at a daily rate calculated from the invoiced costs; and
- D. Total mark up of items (1) through (3) above for overhead and profit, including all levels of subcontractors and Contractor combined, shall not exceed 20% cumulative. For the purposes of this section, overhead includes
  - 6. all indirect labor such as management, supervision, engineer and consulting, drafting, estimating, secretarial and accounting;
  - 7. all field office expenses, including office supplies and equipment;
  - 8. insurance and bonds; and
  - 9. all corporate office expenses.

In the event of delay in the Work which is not due to Section 8-1.07B 'Delay by Others', or is not a Section 8-1.07B Delay, City may direct that the work be accelerated by means of overtime, additional crews or additional shifts or resequencing of the Work. All such acceleration associated with an inexcusable delay, where the delay is attributable to the Contractor, shall be at no cost to the City. In the event of Section 8-1.07B 'Delay by Others', City may similarly direct acceleration and Contractor agrees to perform same on the basis of reimbursement of Direct cost plus a fee of five percent (5%) of such costs but expressly waives any other compensation therefore. In the event of any acceleration requested pursuant to this paragraph, Contractor shall provide promptly a plan including recommendations for, in Contractor's opinion, the most effective and economical acceleration.

**Section 8-1.10** of the Standard Specifications shall be revised as follows:

**8-1.10 Utility and Non-Highway Facilities** – Replace the words “highway right-of-way”, “right-of-way” and “highway” with “project site”.

**Section 9-1.03A** of the Standard Specifications shall be added as follows:

**9-1.03A Work Performed by Contractor** – Replace the words “markup of 33 percent to the cost of labor” with “markup of 15 percent to the cost of labor”.

**Section 9-1.06A** of the Standard Specifications shall be added as follows:

**Section 9-1.06A Design Payment-** Partial payments for the design portion of the design-build project shall be made to the Contractor according to the following schedule. Upon completion of a 50% design, the Contractor shall submit a written request for partial payment and, upon approval by the City’s Engineer, may be eligible for payment of an amount not exceeding 50% of the value of Item 1 and/or Item 3 as listed on Page 4, Schedule of Quantities, of the Proposal. Upon completion of a 90% design, the Contractor shall submit a written request for partial payment and, upon approval by the City’s Engineer, may be eligible for payment of an amount not exceeding 80% of the value of Item 1 and/or Item 3 as listed on Page 4, Schedule of Quantities, of the Proposal. Upon completion of a 100% design, the Contractor shall submit a written request for partial payment and, upon approval by the City Engineer, may be eligible for payment of an amount not exceeding 90% of the value of Item 1 and/or Item 3 as listed on Page 4, Schedule of Quantities, of the Proposal. Upon acceptance of the 100% design by the City’s Engineer, the contractor shall submit a written request for final payment. No such estimate or payment shall be required to be made when, in the judgment of the City’s Engineer, the work is not proceeding in accordance with the provisions of the Contract. No estimate or payment shall be construed to be acceptance of any defective design.

**Section 9-1.06B** of the Standard Specifications shall be added as follows:

**Section 9-1.06B Acceptance of Final Payment Constitutes Release** - Acceptance by the Contractor of final payment shall be and shall operate as a release to the City, its officers and employees of all claims and liability to the Contractor for all things done or furnished in connection with the work and for every act and neglect of the City, its officers and employees and others relating to or arising out of the work. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this Contract or the Contractor's Bond for Faithful Performance and Contractor's Payment Bond.



**Section 9-1.07C** of the Standard Specifications shall be added as follows:

**9-1.07C Claims Certification** - All claims submitted by the contractor shall include the following personal certification:

"I, \_\_\_\_\_, BEING THE \_\_\_\_\_

(MUST BE AN OFFICER) OF \_\_\_\_\_ (GENERAL CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE CITY IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT, AND/OR OTHER SEVERE LEGAL CONSEQUENCES."

By: \_\_\_\_\_  
Title

### **Beginning of Work and Time of Completion**

The Contractor shall diligently prosecute the contract to completion before the expiration of **180 calendar days** from the first chargeable day as set forth in the Notice to Proceed.

### **Liquidated Damages**

The Contractor shall pay to the City of San Jose the sum of \$1,000 per day for each and every day's delay in finishing the work in excess of the number of days prescribed above.

### **Equality Assurance**

The Contractor shall comply with the Nondiscrimination / Nonpreferential Treatment requirements set forth in Attachment 1 and Attachment 3 pursuant to Chapter 4.08 of the City of San Jose Municipal Code. The Contractor shall comply with the Prevailing Wage requirements set forth in Attachment 5. Attachment 1, Attachment 3, and Attachment 5 are attached and are a part of these special provisions.

### **Insurance Requirements**

Attention is directed to Attachment 4, "Insurance Requirements", of these special provisions.

# Attachment 5

## Contract Provisions for Prevailing Wages

### Prevailing Wages

Attention is called to the fact that State of California Prevailing Wage Rate requirements apply to this project. Copies of the General Prevailing Wage Determinations made by the California Director of Industrial Relations are available at:

Office of Equality Assurance  
200 East Santa Clara Street, 5th Floor  
San Jose, CA 95113

and at:

Office of the City Clerk  
200 East Santa Clara Street, Wing 2nd Floor  
San Jose, CA 95113

The General Prevailing Wage Determination is also available via the Internet at:

[www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD)

All questions regarding prevailing wage requirements are to be directed to the Office of Equality Assurance at 408-535-8430.

**Exception.** Prevailing wage requirements do not apply to Field Service Engineers whose scope of work entails disassembly of existing electrical switchgears; design, fabrication and installation of circuit breakers, starters, steel or copper bus, and electrical devices; and testing of completed work.

### In the performance of this Agreement:

#### I. Standards of Responsibility: Prevailing Wages (Municipal Code 4.10.200)

The city requires in all of its procurement procedures that all persons who submit bids, proposals or offers to enter into a contract with the city to do so truthfully and in good faith, and shall not attempt to mislead the city with respect to the following including, but not limited to, records regarding the nature or quality of the work performed under the contract, payroll records, classification of employees on payroll records, and payment of prevailing wages where called for by the contract.

A. Please note the following classifications are **not** allowed on City of San Jose public works construction contracts:

1. Landscape Maintenance Laborer
2. Carpet, Linoleum:

- a. Floor Preparation Worker Trainee, First 6 Months
- b. Floor Preparation Worker Trainee, Second 6 Months
- c. Floor Preparation Worker Trainee, Third 6 Months
- d. Floor Preparation Worker Trainee, Fourth 6 Months
- e. Floor Preparation Worker Trainee, Fifth 6 Months
- f. Floor Preparation Worker Trainee, Sixth 6 Months
- g. Floor Preparation Worker Trainee, Seventh 6 Months
- h. Floor Preparation Worker Trainee, Eighth 6 Months
- i. Floor Covering Handler Trainee, First 3 Months
- j. Floor Covering Handler Trainee, Second 3 Months

3. Electrician:

- a. Material Handler, First Six Months

4. Plumber:

- a. Underground Utility Tradesman I
- b. Underground Utility Tradesman I
- c. Landscape Tradesman I
- d. Landscape Tradesman II
- e. Refrigeration Tradesman (Year 2)
- f. Refrigeration Tradesman (Year 3)
- g. Refrigeration Tradesman (Year 4)
- h. Refrigeration Tradesman (Year 5)

B. The following contractors have been debarred from bidding or performing work on any City projects:

- 1. Trimpak LLC for the period November 7, 2002 to November 7, 2005

C. The following contractors have agreed to not bid or perform work on any City projects:

- 1. Spectrum Painting and Decorating for the period August 21, 2002 to August 21, 2005

2. Wesco Infrastructure Technologies for the period September 9, 2003 to September 9, 2006

## **II. Remedies For Contractor's Breach Of Prevailing Wage/Living Wage Provisions**

A. General: Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement ("Document Provision"). Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

1. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
  - a. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
  - b. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose. It increases the ability of such workers to attain sustenance, decreases the amount of poverty, and reduces the amount of taxpayer funded social services in San Jose.
  - c. It increases competition by promoting a more level a more level playing field among contractors with regard to the wages paid to workers.
2. Withholding of Payment: Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Provision and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Prevailing Wage Provision.

In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Provision, is an express condition of the City's obligation to make each payment due the Contractor pursuant to this Contract. The City is not obligated to make payment due the contractor until contractor has performed all of its obligations under these provisions.

Any payment by the City, despite Contractor's failure to fully perform its obligations under these provisions, shall not be deemed to be a waiver of any other term or condition contained in this contract or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

3. Liquidated Damages For Breach Of Wage Provision: Contractor agrees its breach of the Wage Provision would cause the City damage by undermining the Goals, and the City's damage would not be remedied by contractor's payment of restitution to

the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Provision would be impracticable and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

4. Audit Rights: All Records or documents required to be kept pursuant to this contract to verify compliance with the Wage Provision shall be made available at no cost to the City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to the City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this contract.